

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 005238

SIPDIS

LONDON AND PARIS FOR AFRICA WATCHERS

E.O. 12958: DECL: 12/21/2025

TAGS: [PGOV](#) [PREL](#) [PHUM](#) [KDEM](#) [KE](#)

SUBJECT: KENYAN CONSTITUTIONAL REVIEW: WAITING FOR A JUMP-START

Classified By: A/Political Counselor Lisa Peterson for reasons 1.4 (b,d)
)

1. (C) SUMMARY: Following the defeat of the proposed document in the November 21 referendum, it is unclear if and how the government plans to proceed with the process of delivering to Kenyans a new constitution. What is abundantly apparent is that the country expects the review to continue, without further delay. President Kibaki has been noncommittal on the issue, making obligatory but only passing references to the need to continue work on a new constitution. Observers have little faith in the newly appointed Justice and Constitutional Affairs Minister's interest in fulfilling the NARC government's long overdue promise. Civil society is pushing hard for the process to resume, but without government initiative, the review will languish. END SUMMARY.

POLL RESULTS: CONSTITUTION MATTERS

2. (C) KANU Secretary General William Ruto's observed to PolCouns and Poloff in a December 17 conversation that Kenyans' high turnout for the referendum indicated they are intent on a new constitution for their country. Poll results published on December 21 confirmed Ruto's remark, revealing that 74 percent of Kenyans considered it important to have a new document in place before the December 2007 general election. The same study found that 31 percent felt the next step should be a review by a team of experts. On where to start, nearly half of the respondents wanted the review to commence with the Bomas draft, with the remainder split nearly equally between using the Wako Draft (defeated on November 21) or the current constitution as the baseline (22 and 21 percent, respectively).

CIVIL SOCIETY: TRYING TO KICK-START THE PROCESS

3. (SBU) On December 8, 50 Kenyan civil society organizations met to discuss the "future of constitution-making in Kenya." The result was a "Roadmap for Post-referendum Process of Completion of Kenya's Constitution Making," which lays out a timetable for putting in place a new constitution by December 2007. The plan is comprised of four stages, each with a completion date: governmental and non-governmental stakeholders collaborate to draft legislation formalizing the review process (30 March 2006); passage and enactment of the new law (30 May 2006); drafting of a proposed constitution, and referendum (31 December 2006); and operationalization of the new constitution (30 June 2007). NGO Action Aid, which held its own conference November 30 with civil society groups to discuss how to "midwife a new constitutional dispensation," has also formulated recommendations for continuing the review process. One concern, Action Aid told Poloff, is that with too many independent initiatives, civil society runs the risk of redundancy and loss of effectiveness.

4. (C) One of the event's organizers, activist Davinder Lamba, told poloff on December 21 that one purpose of the roadmap exercise, which focused on process and not content, was to highlight that an excessively tight timeline would be necessary in order to have a new constitution in place before the 2007 general elections. The exercise demonstrated that the 2007 deadline would be unrealistic, as any of the steps along the way could become mired in controversy. Drafting and passing the required legislation alone could take several months. The alternative, Lamba remarked, would be for the government to simply hand down a decision, "like before," which would not surprise him.

SWEPT UNDER THE STATEHOUSE CARPET

5. (C) For all the activity in the non-governmental sector on constitutional review, official Kenya has been noncommittal since the referendum, apart from rumors on December 22 that the president would name a panel of 10 "neutral" experts to restart the process. Kibaki, in his major speeches after November 21, has dutifully made scant and vague reference to constitutional review. When he

announced his new cabinet on December 7, Kibaki acknowledged the importance of a new constitution for Kenyans, pledging to "facilitate dialogue and consultations," and establish a legal framework. Two days later, swearing in his cabinet (composed solely of people from his side of the constitutional divide), he ironically called for a "consultative and all-inclusive process." During his National Day speech on December 12, he repeated his earlier, brief, promise to facilitate the process. In these speeches, he kept references to the constitution minimal, placing his emphasis on urging Kenyans to focus on development issues. In his remarks accepting the referendum outcome, Kibaki told Kenyans that, after spending a lot of energy on constitutional politics, it was "now time to refocus our energies more intensively to development."

16. (C) Lamba doubted the government's commitment to continuing, and completing, the constitutional review process. There is no coherence within the government, which has yet to take the time to reflect on this issue, he commented. He was concerned that Kibaki might again put the process in the hands of a single person, noting that Justice and Constitutional Affairs Minister Martha Karua, "contemptuous" of civil society, did not have a record of valuing consultation. Ruto also had his doubts, remarking that the new "hard-liner" Minister could block the constitutional review process. The president is not very interested in a new constitution, he added. Indeed, the mandate of the government body responsible for the review process, the Constitution of Kenya Review Commission, expired on December 20, leaving the country without an official organization to guide the process.

17. (C) COMMENT: Completion of the constitutional review process will depend on whether the Kibaki government decides to tune in to what the Kenyan people want. As organized and vocal as civil society may be, it is up to Kibaki and Minister Karua to propel the process forward, and determine the shape it will take. All indications are that there is little sense of urgency in the government to continue the process, despite clear signals from Kenyans and civil society that this is a priority. Even if State House does decide to move ahead, Minister Karua's desire to do so meaningfully will remain a question mark until she begins to speak to Kenyans about how she intends to fulfill her mandate. With 77 percent of Kenyans confident a new constitution will be in place in time for the 2007 election (according to the recent poll), failure to deliver could create problems at the polls for the Kibaki government. END COMMENT.
BELLAMY